APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 963—August Term, 1981

(Argued: April 26, 1982 Decided: May 6, 1982)

Docket No. 81-6229

FEDERAL ELECTION COMMISSION,
Plaintiff-Appellant,

—against—

HALL-TYNER ELECTION CAMPAIGN COMMITTEE, *et al.*,
Defendants-Appellees.

Before:

KAUFMAN, VAN GRAAFEILAND, *Circuit Judges,*
and LOWE, *District Judge.**

Appeal from the judgment entered on an order of the United States District Court for the Southern District of New York, Gagliardi, *J.*, dismissing the complaint and granting summary judgment in favor of defendants.

Affirmed.

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* Of the United States District Court for the Southern District of New York, sitting by designation.

RICHARD B. BADER, Assistant General Counsel, Federal Election Commission, Washington, D.C. (Charles N. Steele, Jeffrey H. Bowman, Miriam Aguiar, Washington, D.C., *of Counsel*), *for Appellant.*

JOHN J. ABT, New York, New York (Jeffrey Schwartz, New York, New York, *of Counsel*), *for Appellees.*

VICTOR RABINOWITZ, Rabinowitz, Boudin, Standard, Krinsky & Lieberman, New York, New York, *for Amicus Curiae National Emergency Civil Liberties Committee.*

ARTHUR EISENBERG, New York, New York, JOEL GORA, Brooklyn, New York, *for Amicus Curiae New York Civil Liberties Union.*

KAUFMAN, *Circuit Judge:*

Anonymity has long been essential to uninhibited political activity in a democratic society. The secret ballot ensures that no one must answer for the vote he casts. Confidentiality prevents the apprehension of reprisal that threatens to suppress the robust interchange of ideas at the core of the First Amendment's guarantee of free speech and protection of privacy in association. A society confident in its stability does not fear the voice of opposition. Indeed, unafraid of dissent, we recognize our ability to exhibit special indulgence to nurture the free expression of minority views. Realizing that mere identification with certain disfavored ideologies can result in harassment which may silence those voices, the Constitution protects private support of political associations.

Today we are asked to determine whether, in this instance, the Constitution demands that a particular minority political group be exempted from certain disclosure and record-keeping requirements to safeguard

the privacy which is essential to the right of association of its members. This group, the Hall-Tyner Election Campaign Committee ("Committee"), supported the campaign of the candidates of the Communist Party, U.S.A., Gus Hall and Jarvis Tyner, in their drive to be elected President and Vice-President of the United States, respectively, in the 1976 national elections. The Federal Election Commission ("FEC") would have us find that the Committee and its Treasurer, Frances Bordofsky, must reveal the names and maintain records of contributors to its campaign coffers in the 1976 presidential election. Judge Gagliardi, granting summary judgment in favor of the Committee, held that the disclosure and recordkeeping requirements of the Federal Election Campaign Act, 2 U.S.C. § 431 *et seq.*, could not constitutionally be applied to the Committee and Bordofsky.[1] We agree, and for the reasons set forth below, we affirm.

The Federal Election Campaign Act ("FECA") imposes numerous restraints upon individuals and groups engaged in political activities relating to national elections.[2] At issue here is the applicability of the Act's recordkeeping and disclosure requirements to the Committee and Bordofsky. The literal terms of FECA re-

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[1] *See Federal Election Comm'n* v. *Hall-Tyner Election Campaign Comm.*, 524 F. Supp. 955 (S.D.N.Y. 1981).

[2] FECA was amended by the Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, 93 Stat. 1339 (1980) effective after the alleged violations in this case. All citations are to the statute as codified prior the the 1979 amendments. Every candidate for federal office must designate a "principal campaign committee" which is charged with complying with the statutory requirements discussed below. 2 U.S.C. § 432(e). The Hall-Tyner Election Campaign Committee served as the principal campaign committee for the candidates of Gus Hall and Jarvis Tyner in 1976.

quired Bordofsky to maintain records specifying the name and address of each person who had contributed more than $50 to the Committee, and the name, address, occupation and principal place of business of each person contributing an amount in excess of $100.[3] On its face, the Act also mandated that the information concerning those who had contributed more than $100 be reported to the Federal Election Commission.[4]

On March 5, 1976, in response to a request from Bordofsky, the general counsel of the Committee, John J. Abt, rendered a written opinion that the recordkeeping and disclosure requirements of FECA were unconstitutional as applied to the Committee and its treasurer, Bordofsky. Pursuant to Abt's opinion, the Committee advised all potential contributors that they might, if they so desired, make their contributions anonymously, in which case the Committee would neither record nor report their names. In reports filed with the Federal Election Commission between April 10, 1976 and April 10, 1979, the Committee acknowledged financial contributions of $423,893.62 The itemized receipts included 76 contributors listed by name and 424 contributors listed as "anonymous."[5]

After an unsuccessful attempt to persuade the Committee to comply with the requirements of FECA, the Federal Election Commission instituted this civil enforcement action pursuant to 2 U.S.C. § 437g(a)(5)(B).

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[3] 2 U.S.C. § 432(c).

[4] 2 U.S.C. § 434(b)(2).

[5] These receipts were listed on Schedule A of FEC Form 3.

The Committee conceded that it had failed to comply with the Act. It argued, instead, that the recordkeeping and disclosure requirements were unconstitutional as applied to the Committee and Bordofsky on the ground that such application would abridge the First Amendment freedom of association rights of the Committee's supporters.

Upon cross-motions for summary judgment, Judge Gagliardi dismissed the FEC's complaint, holding that the recordkeeping and disclosure provisions of FECA are unconstitutional as applied to the Committee. He described the test for determining whether the application of the challenged portions of the FECA to the Committee could pass constitutional muster by applying the standards established in *Buckley* v. *Valeo*, 424 U.S. 1 (1976). Specifically, he recognized the ultimate question to be answered is whether the undisputed evidence in the record establishes, as a matter of law, a reasonable probability that compelled disclosure of the names of contributors " 'will subject them to threats, harassment, or reprisals from either Government officials or private parties?' " *Federal Election Comm'n* v. *Hall-Tyner Election Campaign*, 524 F. Supp. 955, 958 (S.D.N.Y. 1981). The evidence relied on by the district judge included the extensive body of state and federal legislation subjecting Communist Party members to civil disability and criminal liability, reports and affidavits documenting the history of governmental surveillance and harassment of Communist Party members, as well as affidavits indicating the desire of contributors to the Committee to remain anonymous. Based on this evidence, the judge concluded that there existed a reasonable probability of harassment of identified contributors to the Committee who were, in fact, sponsoring candidates of the Communist Party.

Clearly, this undisputed evidence demonstrated that mandatory disclosure and recordkeeping would dis-

courage numerous individuals from contributing to the Committee on the basis of the reasonable probability that they would later be subjected to governmental or private harassment and rebuke. Accordingly, we decline to apply the recordkeeping and disclosure provisions of FECA to the Committee for such requirements would violate the First Amendment of the Constitution.

II

The genesis of our holding lies in an analysis of the extent to which the Government may regulate election practices and procedure when such controls threaten to unreasonably impair the rights of privacy of association and belief guaranteed by the First Amendment. Our task is somewhat simplified because we do not write on a *tabula rasa*. In *Buckley* v. *Valeo*, 424 U.S. 1 (1976), the Supreme Court comprehensively assessed the constitutionality of FECA.[6] The Court concluded that although the disclosure provisions of FECA were not unconstitutional on their face, they might well be unconstitutional as applied to particular disfavored minority parties or groups. To apply the teachings of *Buckley* we must begin with a review of the constitutional and doctrinal trends which have shaped the contours of First Amendment protections for those with unpopular views who venture into the arena of political debate.

Free speech would be a hollow right indeed if it meant only that the majority remained free to express thoughts

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[6] The Court in *Buckley* v. *Valeo*, 424 U.S. 1 (1976) (per curiam), considered the provisions of FECA as they existed prior to the 1976 amendments. The recordkeeping requirements at that time related to all contributions in excess of $10. In 1976, the threshold amount was raised to $50. Pub. L. No. 94-283 § 103(b), 90 Stat. 480 (1976).

consistent with conventional wisdom. The principle of free expression requires that all groups remain unfettered when expounding their ideologies, regardless of how universally disfavored or repugnant those opinions may be. In his first Inaugural Address nearly two centuries ago, Thomas Jefferson eloquently phrased this fundamental precept:

> If there be any among us who would wish to dissolve this Union or change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it.[7]

The diversity of thought which our Nation cherishes is at the core of our intellectual richness. The First Amendment represents a faith in the ability of the public to discard dangerous or erroneous policies, and a belief that the Republic is strengthened by an uninhibited competition of ideas. As Justice Holmes taught, the theory of our Constitution is that "the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market . . . ." *Abrams* v. *United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting).[8]

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[7] The belief that the opposition need not be silenced because truth will ultimately triumph has been shared by well recognized and thoughtful writers. *See e.g.*, J. Locke, A Letter Concerning Toleration 151 (J.W. Gough ed. 1948) ("For the truth will certainly do well enough if she were left for herself."); J. Milton, Areopagitica 78, 126 (J. C. Suffolk ed. 1968) ("[W]ho ever knew truth put to the worse, in a free and open encounter?").

[8] *See Williams* v. *Rhodes*, 393 U.S. 23, 32 (1968) ("There is, of course, no reason why two parties should retain a permanent monopoly on the right to have people vote for or against them. Competition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms").

Tolerance of the unpopular and disagreeable is the hallmark of a truly free society.[9]

There is a paramount public interest in maintaining a vigorous and aggressive political system which includes even participants whose ideologies are abhorrent to that system. This principle repels totalitarianism and the rise of dictators by permitting even those whose views are anathema to ours to partake in the dynamics of an open and vigorous election without fear of reprisal.

Acknowledging the importance of fostering the existence of minority political parties, we must also recognize that such groups rarely have a firm financial foundation. If apprehension is bred in the minds of contributors to fringe organizations by fear that their support of an unpopular ideology will be revealed, they may cease to provide financial assistance. The resulting decrease in contributions may threaten the minority party's very existence. Society suffers from such a consequence because the free flow of ideas, the lifeblood of the body politic, is necessarily reduced. Accordingly, a nation dedicated to free thought and free expression cannot ignore the grave results of facially innocuous election requirements.

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[9] Our commitment to these principles has been demonstrated on innumerable occasions. The Supreme Court has insisted that the procedural safeguards required of a State seeking to enjoin a demonstration be rigorously followed, even when the group targeted is Nazis, intent on preaching hatred and antisemitism, *National Socialist Party* v. *Village of Skokie*, 432 U.S. 43 (1977) (per curiam). Similarly, the Court has held that a leader of the Ku Klux Klan may not be convicted for advocating the use of force unless the advocacy is directed to inciting "imminent lawless action." *Brandenburg* v. *Ohio*, 395 U.S. 444 (1969).

The power of a government to repress dissent is substantial and can be exercised in a myriad of subtle ways. Privacy is an essential element of the right of association and the ability to express dissent effectively. As a result, removing the cloak of anonymity from a political committee by requiring it to disclose the names of those who purchase its publications threatens important First Amendment values. Such forced revelations would likely lead to "vexatious inquiries" which consequently could instill in the public an unremitting fear of becoming linked with the unpopular or the unorthodox. *United States* v. *Rumely*, 345 U.S. 41, 56-58 (1953) (Douglas, J., concurring).

A unanimous Supreme Court in *NAACP* v. *Alabama*, 357 U.S. 449 (1958), fashioned its decision with this doctrinal tool when it held that the NAACP could not be compelled to deliver to the Alabama Attorney General the names and addresses of its members and agents in the State of Alabama. Recognizing "the vital relationship between freedom to associate and privacy in one's associations," *id.* at 462, the Court declared that the constitutional prohibition against mandatory identification of supporters is particularly strong when the group is associated with unpopular positions: "Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." *Id.*

These principles have consistently been reaffirmed as courts protect freedom of association not only against direct attack, but against inroads by the insidious interference that often follows public identification with controversial organizations. In sustaining a constitutional challenge to a coerced disclosure of NAACP membership lists, for instance, the Supreme Court

reasoned that the evidence indicated that the government's action represented a substantial encroachment upon the right of privacy of association. *Bates* v. *Little Rock*, 361 U.S. 516 (1960). The adverse impact that publication of the lists would have on membership caused particular concern, for the NAACP had suffered significant harassment in the past. *Id.* at 524.

Emanating from these cases is a fundamental tenet of First Amendment jurisprudence. Because compelled disclosure can seriously impair the right to privacy of association and belief, it is permissible only upon a showing of compelling state interest. *Gibson* v. *Florida Legislative Investigation Committee*, 372 U.S. 539, 546 (1963). With these principles firmly in mind, we turn to the Supreme Court's consideration of the broad challenge to FECA in *Buckley* v. *Valeo, supra*.

III

In *Buckley* v. *Valeo, supra*, the Supreme Court was presented with a sweeping facial challenge to the heart of the central provisions of the 1974 Amendments to the Federal Election Campaign Act. Included was an overbreadth challenge to the constitutionality of the Act's disclosure requirements. The Court reaffirmed the time-honored doctrine that statutorily mandated disclosure must be justified by a compelling governmental interest and that there must be a "substantial relation" between the governmental interest[10] and the information required to be revealed. 424 U.S. at 64.

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[10] The Court specified three governmental interests thought to be served by the disclosure requirements. Disclosure of the sources of political campaign funds assists voters in ascertaining the political proclivities of candidates. In addition, it deters corruption by expos-

Although the Court held that there was a sufficient correlation between governmental interests and the required disclosures to survive a facial attack, it also recognized that the result might well be different when the disclosure was sought from a minority party: "[T]he governmental interest in disclosure is diminished when the contribution in question is made to a minor party with little chance of winning an election." *Id.* at 70. Tacitly acknowledging the necessity of fostering the stability and existence of minority parties, the Court articulated a flexible rule: When a minority party demonstrates a reasonable probability of harassment caused by disclosure, FECA's requirements cannot constitutionally be applied to the party.[11]

In assessing the evidence of harassment in this case, we note that *Buckley* did not impose unduly strict or burdensome requirements on the minority group seeking constitutional exemption. A minority party striving to avoid

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ing large contributions that might otherwise influence the recipient to deliver secret post-election favors should he win the election. Finally, disclosure facilitates the detection of violations of the FECA contribution limitations. *Buckley* v. *Valeo*, *supra*, 424 U.S. at 66-68.

[11] Responding to the concern that harrassment is often illusive and difficult to prove, the Supreme Court stated that minority parties "must be allowed sufficient flexibility in the proof of injury." *Buckley* v. *Valeo*, *supra*, 424 U.S. at 74. This flexibility meant that:

> The evidence offered need show only a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties. The proof may include, for example, specific evidence of past or present harassment of members due to their associational ties, or of harassment directed against the organization itself. A pattern of threats or specific manifestations of public hostility may be sufficient. *Id.*

FECA's disclosure provisions does not carry a burden of demonstrating that harassment will certainly follow compelled disclosure of contributors' names. Indeed, when First Amendment rights are at stake and the spectre of significant chill exists, courts have never required such a heavy burden to be carried because " 'First Amendment freedoms need breathing space to survive' ". *Keyishian* v. *Board of Regents*, 385 U.S. 589, 604 (1967), *quoting NAACP* v. *Button*, 371 U.S. 415, 433 (1963). Breathing space is especially important in a historical context of harassment based on political belief. Our examination of the treatment historically accorded persons identified with the Communist Party and a survey of statutes still extant reveal that the disclosure sought by the FEC would have the effect of restraining the First Amendment rights of supporters of the Committee to an extent unjustified by the minimal governmental interest in obtaining the information.[12]

Numerous statutes purport to subject members of the Communist Party to both civil disabilities and criminal liability. For example, the Communist Control Act, 50 U.S.C. § 841 *et seq.*, declares that the Communist Party of the United States "is in fact an instrumentality of a conspiracy to overthrow the Government of the United States." The preamble to this Act concludes with the statement that "the Communist Party should be outlawed." The statute further provides that "whatever rights, privileges, and immunities which have heretofore been granted to said [Communist] party or any subsidiary organization by reason of the laws of the United States or any political subdivision thereof, are terminated." *Id.* at

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[12] *See Buckley* v. *Valeo*, *supra*, 424 U.S. at 70-71.

§ 842. In addition, the rights and benefits of our national equal employment opportunity laws do not cover any "individual who is a member of the Communist Party of the United States." 42 U.S.C. § 2000e-2(f). Moreover, by statute, a naturalized citizen can have his citizenship revoked, 8 U.S.C. § 1451(c), and can be deported, 8 U.S.C. § 1251(a)(6)(C), for membership in the Communist Party.

Several states also have enacted laws which place supporters of the Committee in danger of legal sanctions or harassment if their ties with the Communist Party should be made public. It is still illegal in many states simply to be a member of the Communist Party.[13] Contributions to the Communist Party are also proscribed by many state statutes.[14]

These laws, drafted by Congress and the legislatures of the various states, are an ever-present threat of reprisal to those who contribute to the Committee. It is of little moment that prosecutions under these laws are rare and that these statutes may currently lie dormant.[15] Surely, it

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[13] *E.g.*, Fla. Stat. § 876.02(5) (1976); Mass. Ann. Laws ch. 264, §§ 16A, 17, 19 (Michie/Law. Co-op. 1980); Okl. Stat. tit. 21, § 1266.4(4) (1961); Tex. Rev. Civ. Stat. Ann. Art. 6889-3A, § 5(4) (Vernon 1960).

[14] *E.g.*, Mass. Ann. Laws ch. 264, § 23 (Michie/Law. Co-op 1980); Okl. Stat. tit. 21, § 1266.4(4) (1961); Tex. Rev. Civ. Stat. Ann. art. 6889-3A, § 5(4) (Vernon 1960).

[15] The FEC points out that some of the statutes directed at members of the Communist Party have been declared unconstitutional by the courts, *See, e.g., Boord* v. *Subversive Activities Control Board*, 421 F.2d 1142 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1042 (1970) holding unconstitutional the disclosure provisions of the Subversive Activities Control Act). This misses the point for three reasons. First, these statutes are significant as a reflection of popular will and

is not inconceivable that a statute long ignored may suddenly be resurrected and employed in a criminal prosecution. *Compare Poe* v. *Ullman*, 367 U.S. 497 (1961) *with Griswold* v. *Connecticut*, 381 U.S. 479 (1965). Moreover, although a penal statute may not be enforced, First Amendment freedoms may still suffer from its lingering presence. *See Epperson* v. *Arkansas*, 393 U.S. 97, 101-02 (1968).

The Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities, S. Rep. No. 755, 94th Cong., 2d Sess. (1976) ("Senate Report"), details the extensive governmental surveillance and harassment long directed at the Communist Party and its members. The Senate Report reveals a Federal Bureau of Investigation counterintelligence program known as "CPUSA COINTELPRO" which involved the mailing of anonymous letters to employers and spouses of suspected Party members as well as the instigation of IRS investigations of their federal tax returns. Although the CPUSA COINTELPRO program was terminated in 1971,[16] the record in this case includes an affidavit by the Assistant Director of the

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therefore evidence popular animus against the Communist Party. Second, many of these statutes have not been declared unconstitutional and may be used in the future by a zealous prosecutor. The right of free speech can be trampled or chilled even if convictions are never obtained. Finally, the statutes may be reinterpreted to avoid the direct constitutional infirmity. *See, e.g., People* v. *Eapton*, 19 N.Y.2d 496, 281 N.Y.S.2d 9, 227 N.E.2nd 829 (1967), *cert. denied and appeal dismissed*, 390 U.S. 29 (1968) (New York's criminal anarchy statute reinterpreted to avoid its unconstitutionality in a case where the president of a communist club was prosecuted.).

[16] Public dissemination of the Senate Report, with its relevation concerning CPUSA COINTELPRO, did not occur until 1976, the very year of concern in this case. The potential chill of this program may very well have been at its zenith just as the Committee was soliciting contributions from people demanding anonymity.

Intelligence Division of the FBI stating that the Communist Party of the United States remains under active investigation by the FBI. This acknowledgement of continuing FBI surveillance merits substantial weight in any evaluation of the chilling effect the FECA disclosure requirements may impose upon cherished First Amendment freedoms.

In light of this telling evidentiary background, it is not surprising that the Committee received contributions from individuals only after an assurance of anonymity.[17] The stigma arising from public disclosure, which causes potential supporters of an organization to refrain from engaging in protected activity, emphasizes the danger to First Amendment rights posed by disclosure requirements. *See Shelton* v. *Tucker*, 364 U.S. 479, 486-87 (1960). When fear of injury that is neither imaginery nor speculative discourages the exercise of valued and revered First Amendment rights, courts must intercede. *Babbitt* v. *United Farm Workers National Union*, 442 U.S. 289, 301-03 (1979).

As we have noted, to hold that the FECA disclosure provisions may not be appropriately applied to the Committee, it is not necessary to conclude that people identified as supporters of the Communist Party will beyond question be harassed. The test given us by the Supreme Court is that we need only find a "pattern of threats or specific manifestations of public hostility . . . ." *Buckley* v. *Valeo*, *supra*, 424 U.S. at 74. We believe that the

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[17] The Committee submitted affidavits from twelve individuals who explained that they gave their contributions only after being assured that their names would not be revealed. Bordofsky stated in a separate affidavit that the same was true of most people solicited by the Communist Party.

evidence adduced amply meets this standard and, in addition, sufficiently demonstrates a substantial infringement of the right of privacy of association and belief not justified by the Government's relatively insignificant interest in disclosure. *See id.* at 70. It is clear in the circumstances presented here that "the public opprobrium and obloquy which may attach to an individual [identified] as a member of a Communist-action organization is no less considerable than that . . . in *N.A.A.C.P.* and *Bates.*" *Communist Party of the United States* v. *Subversive Activities Control Board*, 367 U.S. 1, 102 (1961).

Only a few words need be added on the recordkeeping requirements. The Federal Election Commission suggests that this provision can be applied to the Committee even if the disclosure demand cannot. We disagree. It is clear that the ultimate thrust of the recordkeeping requirement is the likelihood of eventual review and oversight by the Government. *See* 2 U.S.C. § 438(a)(8) (FEC authorized to conduct audit and field investigations). Indeed, to the extent that these records are never disclosed or obtained by anyone outside the Committee, there is little governmental interest served. The impact on the right of privacy of association by the recordkeeping requirement is as severe as that caused by the disclosure provisions. We therefore hold that these statutory terms, like the disclosure requirements, may not be applied to the Committee.

IV

On another occasion, the Federal Election Commission has been admonished to exercise its authority in a manner harmonious with a system of free expression because an abuse of its power is most repugnant to those who cherish the First Amendment and the unfettered political process it guarantees. *F.E.C.* v. *Central Long Island Tax Re-*

form Immediately Committee, 616 F.2d 45, 55 (2d Cir. 1980) *(en banc)*. Unfortunately, the Commission has failed to heed this warning.

For the FEC to pursue so vigorously its demand for the names and addresses of the contributors to the Committee in the face of the clear chilling effect this activity will inevitably have is to exhibit an appalling disregard for the needs of the free and open political process safeguarded by the First Amendment. This agency charged with administering a comprehensive statute governing fundamental First Amendment freedoms[18] should tread far more lightly than is apparent here. When dealing with values as fragile and precious as those contained in the First Amendment, special care is required.

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[18] *See Buckley* v. *Valeo*, *supra*, 424 U.S. at 14.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the sixth day of May one thousand nine hundred and eighty-two

Present: HON. IRVING R. KAUFMAN,
HON. ELLSWORTH A. VAN GRAAFEILAND,
Circuit Judges
HON. MARY JOHNSON LOWE,
District Judge

#81-6229

FEDERAL ELECTION COMMISSION,
Plaintiff-Appellant,

v.

HALL-TYNER ELECTION CAMPAIGN COMMITTEE, *et al.*,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed in accordance with the opinion of this court with costs to be taxed against the appellant.

A. Daniel Fusaro, Clerk

by Arthur Heller, Deputy Clerk
ARTHUR HELLER, Deputy Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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78 Civ. 3508

OPINION

FEDERAL ELECTION COMMISSION,
Plaintiff,

—against—

HALL-TYNER ELECTION CAMPAIGN COMMITTEE, *et al.*,
Defendants,

APPEARANCES:

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GAGLIARDI, D.J.

The Federal Election Commission (the "FEC") commenced this action for a civil penalty and declaratory and injunctive relief against the Hall-Tyner Election Cam-

paign Committee (the "Committee") and the treasurer of the Committee, Frances Bordofsky. The action is based upon alleged violations of the Federal Election Campaign Act (the "FECA"), 2 U.S.C. § 431 *et seq.*,[1] during the 1976 presidential election campaign. Defendants admit to engaging in the conduct constituting the alleged violations, but assert that the relevant provisions of the FECA as applied to defendants deprive the supporters of the Committee of their First Amendment rights to privacy of association and belief. Both plaintiff and defendants have moved for summary judgment pursuant to Rule 56, Fed. R. Civ. P. For the reasons set forth below, the court has concluded that defendants' motion should be granted and the complaint dismissed.[2]

Background

Gus Hall and Jarvis Tyner were the candidates of the Communist Party, U.S.A. (the "Party") for the offices of President and Vice-President of the United States, respectively, in the 1976 election. The principal campaign committee[3] supporting their candidacy was the defendant

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[1] The FECA was amended by the Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, 93 Stat. 1339 (1980), effective subsequent to the date of the alleged violations in the instant case. Accordingly, all citations are to the statute as codified prior to the 1979 amendments.

[2] Also pending before the court is a motion to quash a subpoena *duces tecum* served by the defendants on the Federal Bureau of Investigation. That motion is rendered moot by the resolution of these motions.

[3] Under 2 U.S.C. § 432(e), every candidate for federal office is required to designate a "principal campaign committee" which must comply with the FECA requirements discussed below.

Committee. Defendant Bordofsky was treasurer of the Committee.

The FECA requirements at issue in this action imposed recordkeeping and disclosure responsibilities on the Committee and Bordofsky. Under the recordkeeping provisions, Bordofsky was required to maintain records identifying the name and address of each person contributing in excess of $50 to the Committee, and the name, address, occupation and principal place of business of each person contributing more than $100. 2 U.S.C. § 432(c). The FECA disclosure provisions required that the Committee include in filings with the FEC the recorded information pertaining to contributors of more than $100. 2 U.S.C. § 434(b)(2).

On March 5, 1976 the general counsel to the Committee rendered a written opinion to the defendants that these recordkeeping and disclosure provisions were unconstitutional as applied to the Committee and its treasurer, Bordofsky. Pursuant to this opinion, the Committee listed 424 contributors of more than $100 as "anonymous" in its reports filed with the FEC.[4] In addition, defendant Bordofsky failed to comply with the FECA recordkeeping requirements with respect to any contributors who elected to remain anonymous.

Thereafter, following an unsuccessful attempt by the FEC to obtain compliance with the statute through informal methods of conference, conciliation, and persuasion, *see* 2 U.S.C. § 437g(a)(5)(A), the FEC instituted the instant civil enforcement action pursuant to 2 U.S.C. § 437g(a)(5)(B). The parties are agreed that the sole issue

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[4] An additional 76 contributors of more than $100 were identified in accordance with the FECA requirements. *See* Brown Affidavit ¶ 6.

before this court is whether the above-cited FECA recordkeeping and disclosure requirements, as applied to the defendants, unconstitutionally abridge the associational rights guaranteed to the supporters of the Committee by the First Amendment.

Discussion

I. *The Disclosure Requirements*

It is well established that the compelled disclosure of members in or contributors to an organization "can seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Buckley* v. *Valeo*, 424 U.S. 1, 64 (1976); *see, e.g.*, *Baird* v. *State Bar of Arizona*, 401 U.S. 1 (1970); *Shelton* v. *Tucker*, 364 U.S. 479 (1960); *Bates* v. *Little Rock*, 361 U.S. 516 (1960); *NAACP* v. *Alabama*, 357 U.S. 449 (1958). Accordingly, governmental regulations requiring such disclosure must survive exacting judicial scrutiny. *Id.* Under this standard the government must show that the regulations further compelling governmental interests sufficient to justify the burden that compelled disclosure places on constitutionally protected rights. *NAACP* v. *Alabama*, *supra*, 357 U.S. at 463; *Pollard* v. *Roberts*, 283 F. Supp. 248, 256-57 (E.D. Ark.) (three-judge court), *aff'd mem.*, 393 U.S. 14 (1968).

In *Buckley* v. *Valeo*, 424 U.S. 1 (1976), the Supreme Court applied these principles in analyzing a constitutional overbreadth attack on the FECA disclosure provisions at issue in the instant case.[5] The attack fo-

[5] *Buckley* addressed the provisions of the FECA prior to the 1976 amendments. At that time, the recordkeeping requirements pertained to all contributions in excess of $10. The 1976 amendments, applicable in the instant case, raised the threshold amount to $50. Pub. L. No. 94-283, § 103(b), 90 Stat. 480 (1976).

cused, in part, on the application of the disclosure requirements to minor political parties. The Court identified three substantial governmental interests generally served by the disclosure requirements. First, disclosure permits the electorate to more accurately determine the position of the candidates in the political spectrum, and alerts voters to the obligations of the candidates to special interests. Second, the requirements deter corruption by publicizing large contributions and expenditures. Finally, disclosure along with recordkeeping provides an essential means for detecting violations of the FECA contribution limitations. 424 U.S. at 66-68.

The Court concluded that these important governmental interests are less substantial when the disclosure requirements are applied to minor parties:

> [T]he governmental interest in disclosure is diminished when the contribution in question is made to a minor party with little chance of winning an election. As minor parties usually represent definite and publicized viewpoints, there may be less need to inform the voters of the interests that specific candidates represent. . . .
>
> The Government's interest in deterring the "buying" of elections and the undue influence of large contributors on officeholders also may be reduced where contributions to a minor party . . . are concerned, for it is less likely that the candidate will be victorious.

Id. at 70. The Court also recognized that the disclosure requirements create a more onerous threat to First Amendment rights when applied to minor parties:

> These movements are less likely to have a sound financial base and thus are more vulnerable to falloffs in contributions. In some instances fears of reprisal may deter contributions to the point where the movement cannot survive. The public interest also

> suffers if that result comes to pass, for there is a consequent reduction in the free circulation of ideas both within and without the political arena.

Id. at 71 (footnotes omitted).

Although the Court held that a blanket exemption for minor parties is not constitutionally required, it concluded that the disclosure requirements of the FECA cannot be constitutionally applied where the record demonstrates that disclosure will expose contributors and members of the organization to a substantial threat of harassment, which would impermissibly impinge upon protected associational activity. *Id.* at 72-74. The standard for determining whether the demonstrated impact on First Amendment rights is sufficient to require an exemption from the disclosure requirements was set forth as follows:

> The evidence offered need show only a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties. The proof may include, for example, specific evidence of past or present harassment of members due to their associational ties, or of harassment directed against the organization itself. A pattern of threats or specific manifestations of public hostility may be sufficient.

Id. at 74.

Accordingly, this court must determine whether the undisputed evidence in the record establishes, as a matter of law, "a reasonable probability" that compelled disclosure of the names of contributors to the defendant Committee "will subject them to threats, harassment, or reprisals from either Government officials or private parties." Defendants rely on five essential items of proof in order to satisfy the *Buckley* standard. Each of these is analyzed below.

1. Defendants cite an extensive body of state and federal legislation which purports to subject members of the Communist Party to both civil disabilities and criminal liability. This legislation clearly manifests the pervasive public hostility that has been, and continues to be, directed towards the Communist Party. *See, e.g.*, Communist Control Act, 50 U.S.C. § 841 *et seq.*[6]

2. Defendants submitted to this court a summary of the Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities, S. Rep. No. 94-755, 94th Cong., 2d Sess. (1976) (the "Senate Report").[7] This report sets forth a detailed history of extensive programs of governmental surveillance and harassment directed at the Party and its members by government agencies. These programs include, for example, the "counterintelligence program" im-

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[6] 50 U.S.C. § 841 sets forth the following declaration of Congress:

> [T]he Communist Party of the United States, although purportedly a political party, is in fact an instrumentality of a conspiracy to overthrow the Government of the United States. . . . [I]ts role as the agency of a hostile foreign power renders its existence a clear present and continuing danger to the security of the United States. It is the means whereby individuals are seduced into the service of the world Communist movement, trained to do its bidding, and directed and controlled in the conspiratorial performance of their revolutionary services. Therefore, the Communist Party should be outlawed.

[7] The court takes judicial notice of the Senate Report. Of course, any facts subject to judicial notice may be properly considered in a motion for summary judgment. *See* 6 *Moore's Federal Practice* ¶ 56.11[9]. Although the FEC challenges the probative value of the report as evidence that FECA disclosure will lead to the harassment of contributors, it has not challenged, through an appropriate affidavit or otherwise, the validity of the Senate Report's factual assertions.

plemented by the Federal Bureau of Investigation ("FBI"), known as "CPUSA COINTELPRO," which involved mailing anonymous letters to employers and spouses of suspected Party members, and provoking IRS investigations of their federal tax returns.[8] Other operations included the extensive use of informants, surreptitious mail opening, and electronic surveillance programs.

3. The record includes an affidavit filed by the Assistant Director of the Intelligence Division of the FBI indicating that the Communist Party, USA is under active investigation by the FBI.[9] The affidavit asserts that the investigation is being conducted in full compliance with "the procedures, requirements and restrictions imposed by the Attorney General Guidelines [for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations], Executive Order 12036, applicable statutes, and the Constitution of the United States." The FEC asserts that the existance of a pending lawful investigation may not amount to factual evidence in support of a First Amendment claim under the *Buckley* standard. This contention must be rejected. The publicly admitted existence of ongoing FBI surveillance operations, even though lawful, is highly probative of the extent to which protected associational activities are likely to be chilled by the FECA disclosure requirements.

4. Defendants submitted to the court, *in camera*, the affidavits of twelve persons asserting that they made

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[8] This program was in effect from 1956 to 1971.

[9] This affidavit was filed in response to defendants' subpoena of documents directed to the FBI. *See* note 2, *supra*. The court has also examined, *in camera*, a memorandum dated October 5, 1976, signed by former Attorney General Edward H. Levi, authorizing continued surveillance of the Party.

contributions to the Committee in 1976 only after receiving an assurance of anonymity.[10] The court agreed to maintain the affidavits under seal and not to disclose the identity of the affiants. Defendants provided the FEC with copies of the affidavits with the names and other identifying information expunged. The affidavits set forth the reasons of the affiants for conditioning their contributions on an assurance of anonymity. Each asserts that the insistence on anonymity stems from the history of governmental harassment of the Party and its suspected members and supporters, and the ongoing investigative operations of the FBI. The affiants express fear of a variety of specific consequences that could result from disclosure, including the possible loss of employment, business and citizenship.

The FEC maintains that these affidavits are not relevant to the showing required by *Buckley*, since they merely reflect the subjective opinions of the affiants about the consequences of FECA recordkeeping and disclosure. This contention is without merit. Disclosure requirements may infringe upon First Amendment rights precisely because the possible consequences of disclosure may instill sufficient fear in potential supporters of the organization to deter them from engaging in protected associational activity. *See Buckley*, 424 U.S. at 71.[11]

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[10] The affidavits were submitted at the suggestion of the court after the FBI filed objections to defendants' subpoena which requested, *inter alia*, all records of FBI investigations of the Party.

[11] Plaintiff also makes a conclusory assertion that the affidavits fail to comply with Rule 56(e). There is no proper basis for this contention. As required by Rule 56(e), each of the affidavits is made on personal knowledge and sets forth "proof which if presented at a formal trial would be competent to support the issues to which it is

5. Defendant Bordofsky, treasurer of the Committee, has filed an affidavit, essentially asserting that most persons solicited by the Party for contributions refused to contribute unless they were assured of anonymity.

The court concludes from the evidence outlined above that defendants have established as a matter of law "a reasonable probability that the compelled disclosure of . . . . contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties." *Buckley*, 424 U.S. at 74. The record plainly reflects an extensive history of governmental harassment and public hostility directed at the Party and its members and supporters. This history, in conjunction with the ongoing investigation by the FBI, and evidence of the continuing climate of fear set forth in the affidavits of anonymous contributors to the Committee, amply establishes that severe abridgment of associational rights is likely to follow from the compulsory disclosure of supporters of Communist Party candidates.[12]

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directed." *Banco de Espana* v. *Federal Reserve Bank of New York*, 114 F.2d 438, 445 (2d Cir. 1940). In fact "any or all statements in the affidavit that would be admissible in evidence . . . if the affiant was on the stand and testifying, is admissible on the issue of whether or not to grant summary judgment." 6 *Moore's Federal Practice* ¶ 56.22[1].

[12] The FEC asserts that the evidence properly before the court is insufficient to satisfy the *Buckley* standard since the record is devoid of any evidence of harassment with respect to either individuals who signed state ballot access petitions for Gus Hall and Jarvis Tyner or contributors to their campaign effort whose names were recorded and reported in compliance with the FECA requirements. This contention is without merit. The court may not impose "[a] strict requirement that chill and harassment be directly attributable to the

The substantial infringement on First Amendment rights demonstrated in the record cannot be justified by the governmental interests furthered by applying the FECA disclosure requirements to the defendants. Hall and Tyner received only 58,689 votes in the 1976 election, and the Committee received only $423,894 in campaign contributions.[13] The viewpoint of the Party is clearly defined, and there is nothing in the record indicating that Party candidates could either win elective office or substantially affect the outcome of an election in the foreseeable future.

Accordingly, the FECA provisions for compulsory disclosure of contributors cannot be constitutionally applied to these defendants.

II. *The Recordkeeping Requirements*

Defendants assert that in addition to the disclosure requirements, the FECA recordkeeping requirements, as applied to the Committee and its treasurer, impermissibly infringe upon associational activity protected by the First Amendment. Although records maintained pursuant to 2 U.S.C. § 432(c) are subject to periodic audits and field investigations by the FEC under 2 U.S.C. § 438(a)(8), the FECA does not authorize the disclosure of the records to the public. *Buckley*, 424 U.S. at 84. Defendants argue that notwithstanding the

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specific disclosure from which the exemption is sought." Such "unduly strict requirements of proof" were expressly disapproved in *Buckley*. 424 U.S. at 74; *see Wisconsin Socialist Workers 1976 Campaign Committee* v. *McCann*, 433 F. Supp. 540, 548 (E.D. Wisc. 1977).

[13] Contributions to other campaign committees supporting Hall and Tyner only amounted to an additional $131,989. *See* Brown Affidavit ¶¶ 6-9.

purportedly confidential nature of these records, the evidence before this court establishes that recordkeeping would chill the exercise of protected associational activity to the same extent as would public disclosure. No such claim was addressed by the Supreme Court in *Buckley*.

The court concludes that under the unique facts of the instant case, the FECA recordkeeping requirements could indeed significantly infringe upon the exercise of First Amendment rights. The FBI is actively engaged in an ongoing investigation of the Communist Party, U.S.A. It is surely reasonable, therefore, for potential contributors to the Party to expect that the FBI would discover their identity through the use of informants or other investigative techniques, if their names were recorded in records maintained by the Committee. The ongoing investigation together with the demonstrated history of pervasive governmental harassment aimed at Party members establishes a "reasonable probability" that FECA recordkeeping would subject contributors "to threats, harassment, or reprisals from either Government officials or private parties." The chilling effect on associational interests is further evidenced by the twelve affidavits submitted to the court by anonymous contributors, which indicate each affiant's fear that the information contained in Committee records would fall into the hands of the FBI.

The FEC maintains that the substantial governmental interests underlying the FECA recordkeeping requirements justify whatever burden is placed on the exercise of First Amendment rights. Indeed, this court is mindful of the fact that "there are governmental interests sufficiently important to outweigh the possibility of infringement, particularly when the 'free functioning of our national institutions' is involved." *Buckley, supra*, 424 U.S. at 66, *quoting Communist Party* v. *Subversive Acti-*

vities Control Bd., 367 U.S. 1, 97 (1961). The FEC's principal objection to exempting defendants from recordkeeping is that it would prevent effective enforcement of the FECA contribution limitations.[14] Accordingly, in order to evaluate the governmental interests served by applying the recordkeeping requirements to the defendants, it is necessary to analyze the interests furthered by effectively enforcing the FECA contribution limitations against contributors to the Committee.

In *Buckley*, the Court held that the FECA contribution limitations can be constitutionally justified by the primary governmental interest served by the FECA as a whole. This interest is:

> to limit the actuality and appearance of corruption resulting from large individual financial contributions. . . . To the extent that large contributions are given to secure a political *quid pro quo* from current and potential office holders, the integrity of our system of representative democracy is undermined. . . .
>
> Of almost equal concern as the danger of actual *quid pro quo* arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions.

Id. at 26-27. It is readily apparent that this important governmental interest is not significantly furthered by effective enforcement of the contribution limits against contributors to the Committee. As observed above, there is nothing in the record which suggests that Party candidates could in the foreseeable future either win elective

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[14] The relevant contribution limitations are currently codified at 2 U.S.C. § 441a.

office or have a significant impact on the outcome of an election. Therefore, no one is likely to contribute to a Communist Party campaign committee with a reasonable expectation of exacting a *quid pro quo* from a current or potential elected official. Accordingly, the interest furthered by providing the FEC with data to enforce the contribution limitations against the contributors to the Committee is not sufficiently compelling to justify the injury resulting to important First Amendment rights.[15]

Therefore, the FECA recordkeeping requirements are unconstitutional as applied to the defendants.

Conclusion

The court concludes that the undisputed facts in the record establish as a matter of law that the relevant provisions of 2 U.S.C. §§ 432(c) and 434(b)(2), as applied to defendants, violate the First Amendment to the Constitution. Plaintiff's motion for summary judgment is denied. Defendants' motion for summary judgment is granted, and the complaint is dismissed.

So Ordered.

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U.S.D.J.

Dated: New York, New York
September 22, 1981.

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[15] The FEC also vaguely asserts that the absence of proper records will impede enforcement of other FECA prohibitions. There is, however, no basis in the record for concluding that substantial governmental interests will be furthered should more stringent enforcement of other FECA provisions against contributors to the Committee be made possible by recordkeeping pursuant to 2 U.S.C. § 432(c).

APPENDIX D

FEDERAL ELECTION CAMPAIGN ACT of 1976

2 U.S.C. § 432. Organization of political committees[1]

(a) *Chairman; treasurer; vacancies; official authorizations.* Every political committee shall have a chairman and a treasurer. No contribution and no expenditure shall be accepted or made by or on behalf of a political committee at a time when there is a vacancy in the office of the chairman or treasurer thereof. No expenditure shall be made for or on behalf of a political committee without the authorization of its chairman or treasurer, or their designated agents.

(b) *Account of contributions; segregated funds.* Every person who receives a contribution in excess of $50 for a political committee shall, on demand of the treasurer, and in any event within 5 days after receipt of such contribution, render to the treasurer a detailed account thereof, including the amount of the contribution and the identification of the person making such contribution, and the date on which received. All funds of a political committee shall be segregated from, and may not be commingled with, any personal funds of officers, members, or associates of such committee.

(c) *Recordkeeping.* It shall be the duty of the treasurer of a political committee to keep a detailed and exact account of—

(1) all contributions made to or for such committee;

(2) the identification of every person making a contribution in excess of $50, and the date and amount thereof

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[1] The former Sec. 432(e), "Unauthorized activities; notice," was stricken from the United Staes Code by P.L. 94-283. Its provisions are now governed by Sec. 441d.

(3) all expenditures made by or on behalf of such committee; and

(4) the identification of every person to whom any expenditure is made, the date and amount thereof and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made.

(d) *Receipts; preservation.* It shall be the duty of the treasurer to obtain and keep a receipted bill, stating the particulars, for every expenditure made by or on behalf of a political committee in excess of $100 in amount, and for any such expenditure in a lesser amount, if the aggregate amount of such expenditures to the same person during a calendar year exceeds $100. The treasurer shall preserve all receipted bills and accounts required to be kept by this section for periods of time to be determined by the Commission.

(e) *Principal campaign committee; reports, filing.*

(1) Each individual who is a candidate for Federal office (other than the office of Vice President of the United States) shall designate a political committee to serve as his principal campaign committee. No political committee may be designated as the principal campaign committee of more than one candidate, except that the candidate for the office of President of the United States nominated by a political party may designate the national committee of such political party as his principal campaign committee. Except as provided in the preceding sentence, no political committee which supports more than one candidate may be designated as a principal campaign committee. Any occasional, isolated, or incidental support of a candidate shall not be construed as support of such candidate for purposes of the preceding sentence.

(2) Notwithstanding any other provision of this title, each report or statement of contributions received or

expenditures made by a political committee (other than a principal campaign committee) which is required to be filed with the Commission under this title shall be filed instead with the principal campaign committee for the candidate on whose behalf such contributions are accepted or such expenditures are made.

(3) It shall be the duty of each principal campaign committee to receive all reports and statements required to be filed with it under paragraph (2) of this subsection and to compile and file such reports and statements, together with its own reports and statements, with the Commission in accordance with the provisions of this title.

2 U.S.C. § 434. Reports

(a) *Receipts and expenditures; completion date, exception.*

(1) Except as provided by paragraph (2), each treasurer of a political committee supporting a candidate or candidates for election to Federal office, and each candidate for election to such office, shall file with the Commission reports of receipts and expenditures on forms to be prescribed or approved by it.

The reports referred to in the preceding sentence shall be filed as follows:

(A) (i) In any calendar year in which an individual is a candidate for Federal office and an election for such Federal office is held in such year, such reports shall be filed not later than the 10th day before the date on which such election is held and shall be complete as of the 15th day before the date of such election; except that any such report filed by registered or certified mail must be postmarked not later than the close of the 12th day before the date of such election;

(ii) such reports shall be filed not later than the 30th day after the date of such election and shall be complete as of the 20th day after the date of such election.

(B) In any other calendar year in which an individual is a candidate for Federal office, such reports shall be filed after December 31 of such calendar year, but not later than January 31 of the following calendar year and shall be complete as of the close of the calendar year with respect to which the report is filed.

(C) Such reports shall be filed not later than the 10th day following the close of any calendar quarter in which the candidate or political committee concerned received contributions in excess of $1,000, or made expenditures in excess of $1,000, and shall be complete as of the close of such calendar quarter: except that any such report required to be filed after December 31 of any calendar year with respect to which a report is required to be filed under subparagraph (B) shall be filed as provided in such subparagraph. In any year in which a candidate is not on the ballot for election to Federal office, such candidate and his authorized committees shall only be required to file such reports not later than the 10th day following the close of any calendar quarter in which the candidate and his authorized committees received contributions or made expenditures, or both, the total amount of which, taken together, exceeds $5,000, and such reports shall be complete as of the close of such calendar quarter; except that any such report required to be filed after December 31 of any calendar year with respect to which a report is required to be filed under subparagraph (B) shall be filed as provided in such subparagraph.

(D) When the last day for filing any quarterly report required by subparagraph (C) occurs within 10 days of an election, the filing of such quarterly report shall be waived and superseded by the report required by subparagraph (A)(i).

Any contribution of $1,000 or more received after the 15th day, but more than 48 hours, before any election shall be reported within 48 hours after its receipt.

(2) Each treasurer of a political committee authorized by a candidate to raise contributions or make expenditures on his behalf, other than the candidate's principal campaign committee, shall file the reports required under this section with the candidate's principal campaign committee.

(3) Upon a request made by a Presidential candidate or a political committee which operates in more than one State, or upon its own motion, the Commission may waive the reporting dates set forth in paragraph (1)(other than the reporting date set forth in paragraph (1)(B)), and require instead that such candidate or political committee file reports not less frequently than monthly. The Commission may not require a Presidential candidate or a political committee operating in more than one State to file more than 12 reports (not counting any report referred to in paragraph (1)(B)) during any calendar year. If the Commission acts on its own motion under this paragraph with respect to a candidate or a political committee, such candidate or committee may obtain judicial review in accordance with the provisions of chapter 7 of Title 5, United States Code.

(b) *Contents of reports.* Each report under this section shall disclose—

(1) the amount of cash on hand at the beginning of the reporting period;

(2) the full name and mailing address (occupation and the principal place of business, if any) of each person who has made one or more contributions to or for such committee or candidate (including the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events) within the calendar year in an aggre-

gate amount or value in excess of $100, together with the amount and date of such contributions;

(3) the total sum of individual contributions made to or for such committee or candidate during the reporting period and not reported under paragraph (2);

(4) the name and address of each political committee or candidate from which the reporting committee or the candidate received, or to which that committee or candidate made, any transfer of funds, together with the amounts and dates of all transfers;

(5) each loan to or from any person within the calendar year in an aggregate amount or value in excess of $100, together with the full names and mailing addresses (occupations and the principal places of business, if any) of the lender, endorsers, and guarantors, if any, the date and amount of such loans;

(6) the total amount of proceeds from—

(A) the sale of tickets to each dinner, luncheon, rally, and other fundraising event;

(B) mass collections made at such events; and

(C) sales of items such as political campaign pins, buttons, badges, flags, emblems, hats, banners, literature, and similar materials;

(7) each contribution, rebate, refund, or other receipt in excess of $100 not otherwise listed under paragraphs (2) through (6);

(8) the total sum of all receipts by or for such committee or candidate during the reporting period, together with total receipts less transfers between political committees which support the same candidate and which do not support more than one candidate;

(9) the identification of each person to whom expenditures have been made by such committee or on behalf of such committee or candidate within the calendar year in an aggregate amount or value in excess of $100,

the amount, date, and purpose of each such expenditure and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made;

(10) the identification of each person to whom an expenditure for personal services, salaries, and reimbursed expenses in excess of $100 has been made, and which is not otherwise reported, including the amount, date, and purpose of such expenditure;

(11) the total sum of expenditures made by such committee or candidate during the calendar year, together with total expenditures less transfers between political committees which support the same candidate and which do not support more than one candidate;

(12) the amount and nature of debts and obligations owed by or to the committee, in such form as the Commission may prescribe and a continuous reporting of their debts and obligations after the election at such periods as the Commission may require until such debts and obligations are extinguished, together with a statement as to the circumstances and conditions under which any such debt or obligation is extinguished and the consideration therefor;

(13) in the case of an independent expenditure in excess of $100 by a political committee, other than an authorized committee of a candidate, expressly advocating the election or defeat of a clearly identified candidate, through a separate schedule (a) any information required by paragraph (9) stated in a manner which indicates whether the independent expenditure involved is in support of, or in opposition to, a candidate; and (b) under penalty of perjury, a certification whether such independent expenditure is made in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate; and

(14) such other information as shall be required by the Commission.

When committee treasurers and candidates show that best efforts have been used to obtain and submit the information required by this subsection, they shall be deemed to be in compliance with this subsection.

(c) *Cumulative reports for calendar year; amounts for unchanged items carried forward; statement of inactive status.* The reports required to be filed by subsection (a) of this section, shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous report during such year, only the amount need be carried forward. If no contributions or expenditures have been accepted or expended during a calendar year, the treasurer of the political committee or candidate shall file a statement to that effect.

(d) *Members of Congress, reporting exemption.* This section does not require a Member of the Congress to report, as contributions received or as expenditures made, the value of photographic, matting, or recording services furnished to him by the Senate Recording Studio, the House Recording Studio, or by an individual whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives and who furnishes such services as his primary duty as an employee of the Senate or House of Representatives, or if such services were paid for by the Republican or Democratic Senatorial Campaign Committee, the Democratic National Congressional Committee, or the National Republican Congressional Committee. This subsection does not apply to such recording services furnished during the calendar year before the year in which the Member's term expires.

(e) *Contributions or expenditures by person other than political committee or candidate.*

(1) Every person (other than a political committee or candidate) who makes contributions or independent expenditures expressly advocating the election or defeat of a clearly identified candidate, other than by contribution to a political committee or candidate, in an aggregate amount in excess of $100 during a calendar year shall file with the Commission, on a form prepared by the Commission, a statement containing the information required of a person who makes a contribution in excess of $100 to a candidate or political committee and the information required of a candidate or political committee receiving such a contribution.

(2) Statements required by this subsection shall be filed on the dates on which reports by political committees are filed. Such statements shall include (A) the information required by subsection (b)(9), stated in a manner indicating whether the contribution or independent expenditure is in support of, or opposition to, the candidate; and (B) under penalty of perjury, a certification whether such independent expenditure is made in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate. Any independent expenditure, including those described in subsection (b)(13), of $1000 or more made after the 15th day, but more than 24 hours, before any election shall be reported within 24 hours of such independent expenditure.

(3) The Commission shall be responsible for expeditiously preparing indices which set forth, on a candidate-by-candidate basis, all expenditures separately, including those reported under subsection (b)(13), made with respect to each candidate, as reported under this subsection, and for periodically issuing such indices on a timely pre-election basis.

FEDERAL ELECTION CAMPAIGN ACT OF 1979

2 U.S.C. § 432. Organization of political committees

(a) *Treasurer; vacancy; official authorizations.* Every political committee shall have a treasurer. No contribution or expenditure shall be accepted or made by or on behalf of a political committee during any period in which the office of treasurer is vacant. No expenditure shall be made for or on behalf of a political committee without the authorization of the treasurer or his or her designated agent.

(b) *Account of contributions; segregated funds.*

(1) Every person who receives a contribution for an authorized political committee shall, no later than 10 days after receiving such contribution, forward to the treasurer such contribution, and if the amount of the contribution is in excess of $50 the name and address of the person making the contribution and the date of receipt.

(2) Every person who receives a contribution for a political committee which is not an authorized committee shall—

(A) if the amount of the contribution is $50 or less, forward to the treasurer such contribution no later than 30 days after receiving the contribution; and

(B) if the amount of the contribution is in excess of $50, forward to the treasurer such contribution, the name and address of the person making the contribution, and the date of receipt of the contribution, no later than 10 days after receiving the contribution.

(3) All funds of a political committee shall be segregated from, and may not be commingled with, the personal funds of any individual.

(c) *Recordkeeping.* The treasurer of a political committee shall keep an account of—

(1) all contributions received by or on behalf of such political committee;

(2) the name and address of any person who makes any contribution in excess of $50, together with the date and amount of such contribution by any person;

(3) the identification of any person who makes a contribution or contributions aggregating more than $200 during a calendar year, together with the date and amount of any such contribution;

(4) the identification of any political committee which makes a contribution, together with the date and amount of any such contribution; and

(5) the name and address of every person to whom any disbursement is made, the date, amount, and purpose of the disbursement, and the name of the candidate and the office sought by the candidate, if any, for whom the disbursement was made, including a receipt, invoice, or canceled check for each disbursement in excess of $200.

(d) *Preservation of records and copies of reports.* The treasurer shall preserve all records required to be kept by this section and copies of all reports required to be filed by this subchapter for 3 years after the report is filed.

(e) *Principal and additional campaign committees; designations, status of candidate, authorized committees, etc.*

(1) Each candidate for Federal office (other than the nominee for the office of Vice President) shall designate in writing a political committee in accordance with paragraph (3) to serve as the principal campaign committee of such candidate. Such designation shall be made no later than 15 days after becoming a candidate. A candidate may designate additional political committees in accordance with paragraph (3) to serve as authorized committees of such candidate. Such designation shall be in writing and filed with the principal campaign committee of such candidate in accordance with subsection (f)(1) of this section.

(2) Any candidate described in paragraph (1) who receives a contribution, or any loan for use in connection with the campaign of such candidate for election, or makes a disbursement in connection with such campaign, shall be considered, for purposes of this Act, as having received the contribution or loan, or as having made the disbursement, as the case may be, as an agent of the authorized committee or committees of such candidate.

(3) (A) No political committee which supports or has supported more than one candidate may be designated as an authorized committee, except that—

petty cash disbursements shall be maintained in accordance with subsection (c)(5) of this section.

(i) When the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by this Act for the political committee, any report or any records of such committee shall be considered in compliance with this Act or chapter 95 or chapter 96 of title 26.

§ 434. Reporting requirements

(a) *Receipts and disbursements by treasurers of political committees; filing requirements.*

(1) Each treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of this subsection. The treasurer shall sign each such report.

(2) If the political committee is the principal campaign committee of a candidate for the House of Representatives or for the Senate—

(A) in any calendar year during which there is a regularly scheduled election for which such candidate is seeking election, or nomination for election, the treasurer shall file the following reports:

(i) a pre-election report, which shall be filed no later than the 12th day before (or posted by registered or

certified mail no later than the 15th day before) any election in which such candidate is seeking election, or nomination for election, and which shall be complete as of the 20th day before such election;

(ii) a post-general election report, which shall be filed no later than the 30th day after any general election in which such candidate has sought election, and which shall be complete as of the 20th day after such general election; and

(iii) additional quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter, and which shall be complete as of the last day of each calendar quarter: except that the report for the quarter ending December 31 shall be filed no later than January 31 of the following calendar year; and

(B) in any other calendar year the following reports shall be filed:

(i) a report covering the period beginning January 1 and ending June 30, which shall be filed no later than July 31; and

(ii) a report covering the period beginning July 1 and ending December 31, which shall be filed no later than January 31 of the following calendar year.

(3) If the committee is the principal campaign committee of a candidate for the office of President—

(a) in any calendar year during which a general election is held to fill such office—

(i) the treasurer shall file monthly reports if such committee has on January 1 of such year, received contributions aggregating $100,000 or made expenditures aggregating $100,000 or anticipates receiving contributions aggregating $100,000 or more or making expenditures aggregating $100,000 or more during such year: such monthly reports shall be filed no later than the 20th day after the last day of each month and shall be

complete as of the last day of the month, except that, in lieu of filing the report otherwise due in November and December, a pre-general election report shall be filed in accordance with paragraph (2)(A)(i), a post-general election report shall be filed in accordance with paragraph (2)(A)(ii), and a year end report shall be filed no later than January 31 of the following calendar year;

(ii) the treasurer of the other principal campaign committees of a candidate for the office of President shall file a pre-election report or reports in accordance with paragraph (2)(A)(i), a post-general election report in accordance with paragraph (2)(A)(ii), and quarterly reports in accordance with paragraph (2)(A)(iii); and

(iii) if at any time during the election year a committee filing under paragraph (3)(A)(ii) receives contributions in excess of $100,000 or makes expenditures in excess of $100,000, the treasurer shall begin filing monthly reports under paragraph (3)(A)(i) at the next reporting period; and

(B) in any other calendar year, the treasurer shall file either—

(i) monthly reports, which shall be filed no later than the 20th day after the last day of each month and shall be complete as of the last day of the month; or

(ii) quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter and which shall be complete as of the last day of each calendar quarter.

(4) All political committees other than authorized committees of a candidate shall file either—

(A)(i) quarterly reports, in a calendar year in which a regularly scheduled general election is held, which shall be filed no later than the 15th day after the last day of each calendar quarter: except that the report for the quarter ending on December 31 of such calendar year shall be filed no later than January 31 of the following calendar year;

(ii) a pre-election report, which shall be filed no later than the 12th day before (or posted by registered or certified mail no later than the 15th day before) any election in which the committee makes a contribution to or expenditure on behalf of a candidate in such election, and which shall be complete as of the 20th day before the election;

(iii) a post-general election report, which shall be filed no later than the 30th day after the general election and which shall be complete as of the 20th day after such general election; and

(iv) in any other calendar year, a report covering the period beginning January 1 and ending June 30, which shall be filed no later than July 31 and a report covering the period beginning July 1 and ending December 31, which shall be filed no later than January 31 of the following calendar year; or

(B) monthly reports in all calendar years which shall be filed no later than the 20th day after the last day of the month and shall be complete as of the last day of the month, except that, in lieu of filing the reports otherwise due in November and December of any year in which a regularly scheduled general election is held, a pre-general election report shall be filed in accordance with paragraph (2)(A)(i), a post-general election report shall be filed in accordance with paragraph (2)(A)(ii), and a year end report shall be filed no later than January 31 of the following calendar year.

(5) If a designation, report, or statement filed pursuant to this Act (other than under paragraph (2)(A)(i) or (4)(A)(ii) is sent by registered or certified mail, the United States postmark shall be considered the date of filing of the designation, report, or statement.

(6) (A) The principal campaign committee of a candidate shall notify the Clerk, the Secretary, or the

Commission, and the Secretary of State, as appropriate, in writing, of any contribution of $1,000 or more received by any authorized committee of such candidate after the 20th day, but more than 48 hours before, any election. This notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate and the office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution.

(B) The notification required under this paragraph shall be in addition to all other reporting requirements under this Act.

(7) The reports required to be filed by this subsection shall be cumulative during the calender year to which they relate, but where there has been no change in an item reported in a previous report during such year, only the amount need be carried forward.

(8) The requirement for a political committee to file a quarterly report under paragraph (2)(A)(iii) or paragraph (4)(A)(i) shall be waived if such committee is required to file a pre-election report under paragraph (2)(A)(i), or paragraph (4)(A)(ii) during the period beginning on the 5th day after the close of the calender quarter and ending on the 15th day after the close of the calendar quarter.

(9) The Commission shall set filing dates for reports to be filed by principal campaign committees of candidates seeking election, or nomination for election, in special elections and political committees filing under paragraph (4)(A) which make contributions to or expenditures on behalf of a candidate or candidates in special elections. The Commission shall require no more than one pre-election report for each election and one postelection report for the election which fills the vacancy. The Commission may waive any reporting obligation of committees required to file for special elections if any report

required by paragraph (2) or (4) is required to be filed within 10 days of a report required under this subsection. The Commission shall establish the reporting dates within 5 days of the setting of such election and shall publish such dates and notify the principal campaign committees of all candidates in such election of the reporting dates.

(10) The treasurer of a committee supporting a candidate for the office of Vice President (other than the nominee of a political party) shall file reports in accordance with paragraph (3).

(b) *Contents of reports.* Each report under this section shall disclose—

(1) the amount of cash on hand at the beginning of the reporting period;

(2) for the reporting period and the calendar year, the total amount of all receipts, and the total amount of all receipts in the following categories:

(A) contributions from persons other than political committees;

(B) for an authorized committee, contributions from the candidate;

(C) contributions from political party committees;

(D) contributions from other political committees;

(E) for an authorized committee, transfers from other authorized committees of the same candidate;

(F) transfers from affiliated committees and, where the reporting committee is a political party committee, transfers from other political party committees, regardless of whether such committees are affiliated;

(G) for an authorized committee, loans made by or guaranteed by the candidate;

(H) all other loans;

(I) rebates, refunds, and other offsets to operating expenditures;

(J) dividends, interest, and other forms of receipts; and

(K) for an authorized committee of a candidate for the office of President, Federal funds received under chapter 95 and chapter 96 of title 26;

(3) the identification of each—

(A) person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of $200 within the calendar year, or in any lesser amount if the reporting committee should so elect, together with the date and amount of any such contribution;

(B) political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution;

(C) authorized committee which makes a transfer to the reporting committee;

(D) affiliated committee which makes a transfer to the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds to the reporting committee from another political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfer;

(E) person who makes a loan to the reporting committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and date and amount of value of such loan;

(F) person who provides a rebate, refund, or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of $200 within the calendar year, together with the date and amount of such receipt; and

(G) person who provides any dividend, interest, or other receipt to the reporting committee in an aggregate

value or amount in excess of $200 within the calendar year, together with the date and amount of any such receipt;

(4) for the reporting period and the calendar year, the total amount of all disbursements, and all disbursements in the following categories:

(A) expenditures made to meet candidate or committee operating expenses;

(B) for authorized committees, transfers to other committees authorized by the same candidate;

(C) transfers to affiliated committees and, where the reporting committee is a political party committee, transfers to other political party committees, regardless of whether they are affiliated;

(D) for an authorized committee, repayment of loans made by or guaranteed by the candidate;

(E) repayment of all other loans;

(F) contribution refunds and other offsets to contributions;

(G) for an authorized committee, any other disbursements;

(H) for any political committee other than an authorized committee—

(i) contributions made to other political committees;

(ii) loans made by the reporting committees;

(iii) independent expenditures;

(iv) expenditures made under section 441a(d) of this title; and

(v) any other disbursements; and

(I) for an authorized committee of a candidate for the office of President, disbursements not subject to the limitation of section 441a(b);

(5) the name and address of each—

(A) person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year

is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure;

(B) authorized committee to which a transfer is made by the reporting committee;

(C) affiliated committee to which a transfer is made by the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds by the reporting committee to another political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfers;

(D) person who receives a loan repayment from the reporting committee during the reporting period, together with the date and amount of such loan repayment; and

(E) person who receives a contribution refund or other offset to contributions from the reporting committee where such contribution was reported under paragraph (3)(A) of this subsection, together with the date and amount of such disbursement;

(6) (A) for an authorized committee, the name and address of each person who has received any disbursement not disclosed under paragraph (5) in an aggregate amount or value in excess of $200 within the calendar year, together with the date and amount of any such disbursement;

(B) for any other political committee, the name and address of each—

(i) political committee which has received a contribution from the reporting committee during the reporting period, together with the date and amount of any such contribution;

(ii) person who has received a loan from the reporting committee during the reporting period, together with the date and amount of such loan;

(iii) person who receives any disbursement during the reporting period in an aggregate amount or value in excess of $200 within the calendar year in connection with an independent expenditure by the reporting committee, together with the date, amount, and purpose of any such independent expenditure and a statement which indicates whether such independent expenditure is in support of, or in opposition to, a candidate, as well as the name and office sought by such candidate, and a certification, under penalty of perjury, whether such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such committee;

(iv) person who receives any expenditure from the reporting committee during the reporting period in connection with an expenditure under section 441a(d) of this title, together with the date, amount, and purpose of any such expenditure as well as the name of, and office sought by, the candidate on whose behalf the expenditure is made; and

(v) person who has received any disbursement not otherwise disclosed in this paragraph or paragraph (5) in an aggregate amount or value in excess of $200 within the calendar year from the reporting committee within the reporting period, together with the date, amount, and purpose of any such disbursement;

(7) the total sum of all contributions to such political committee, together with the total contributions less offsets to contributions and the total sum of all operating expenditures made by such political committee, together with total operating expenditures less offsets to operating expenditures, for both the reporting period and the calendar year; and

(8) the amount and nature of outstanding debts and obligations owed by or to such political committee; and where such debts and obligations are settled for less than their reported amount or value, a statement as to the circumstances and conditions under which such debts or obligations were extinguished and the consideration therefor.

(c) *Statements by other than political committees; filing; contents; indices of expenditures.*

(1) Every person (other than a political committee) who makes independent expenditures in an aggregate amount or value in excess of $250 during a calendar year shall file a statement containing the information required under subsection (b)(3)(A) of this section for all contributions received by such person.

(2) Statements required to be filed by this subsection shall be filed in accordance with subsection (a)(2) of this section, and shall include—

(A) the information required by subsection (b)(6)(B)(iii) of this section, indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved;

(B) under penalty of perjury, a certification whether or not such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate; and

(C) the identification of each person who made a contribution in excess of $200 to the person filing such statement which was made for the purpose of furthering an independent expenditure.

Any independent expenditure (including those described in subsection (b)(6)(B)(iii) of this section) aggregating $1,000 or more made after the 20th day, but more than 24 hours, before any election shall be reported within 24

hours after such independent expenditure is made. Such statement shall be filed with the Clerk, the Secretary, or the Commission and the Secretary of State and shall contain the information required by subsection (b)(6)(B)(iii) of this section indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved.

(3) The Commission shall be responsible for expeditiously preparing indices which set forth, on a candidate-by-candidate basis, all independent expenditures separately, including those reported under subsection (b)(6)(B)(iii) of this section, made by or for each candidate, as reported under this subsection, and for periodically publishing such indices on a timely preelection basis.